

Federal Housing Finance Board

Memorandum

February 7, 1991

TO: Arnold Intrater
General Counsel

FROM: Jon Boustany
Attorney-Advisor

SUBJECT: Treatment of outstanding AHP Advances Upon Termination of Membership.

Issue: Whether a Federal Home Loan Bank may allow a member, whose membership has been terminated, or its successor to maintain outstanding indebtedness with the Federal Home Loan Bank, or whether such advances must be immediately liquidated.

Conclusion: A Federal Home Loan Bank is not required to immediately liquidate the outstanding advances of a former member or its successor, but may liquidate such advances in an orderly manner as determined by the Federal Home Loan Bank.

Discussion:

I. INTRODUCTION.

First American Federal Savings and Loan Association, Huntsville, Alabama ("First American"), a member of the Federal Home Loan Bank ("Bank") of Atlanta, submitted an Affordable Housing Program ("AHP") application during the first 1990 offering. First American intended to use the advances made to it under the AHP ("AHP advances") to finance the City of Huntsville Housing Authority's ("Housing Authority's"), development and construction of a rental facility for low-to-moderate income people in the Huntsville, Alabama area. First American subsequently withdrew its application due to its concern that repayment of the AHP advances would be accelerated if its membership were terminated by its merger into a nonmember commercial bank. First American wishes to reapply for AHP advances, but requests some form of assurance that the AHP advance will not be accelerated.

The Atlanta Bank has requested the Federal Housing Finance Board's ("Finance Board's") opinion on the status of AHP advances made by it to former members of the Federal Home Loan Bank System ("Bank System"). The scope of this memorandum is limited to the statute of advances made by a Bank to a former member. The Finance Board,

as a matter of law and policy, has not taken a position on the effect of charter conversion transactions on Bank membership. Thus, this memorandum does not address the status of a saving⁶ association's membership after the consummation of a charter conversion transaction and is not intended to express any views on the status of membership.

11) THE BANKS ARE NOT REQUIRED TO IMMEDIATELY LIQUIDATE THE OUTSTANDING ADVANCES UPON TERMINATION OF A MEMBER'S MEMBERSHIP.

Section 6(e) of the Federal Home Loan Bank Act ("Bank Act") governs the liquidation of outstanding advances in the event of the withdrawal from or termination of Bank membership. Section 6(e) as amended by section 706(2) of the Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA") provides in pertinent part:

If any member's membership in a Federal Home Loan Bank is terminated, the indebtedness of such member to the Federal Home Loan Bank shall be liquidated in an orderly manner (as determined by the Federal Home Loan Bank), and upon completion of such liquidation, the capital stock in the Federal Home Loan Bank owned by such member shall be surrendered and canceled?

FIRREA changed the language in section 6(e) from "shall be liquidated" upon termination of membership in the Bank under the predecessor provision to "shall be liquidated in an orderly manner (as determined by the (Bank)). The amendment to section 6(e) provides the Banks increased flexibility and considerable leeway when liquidating the outstanding advances to former members of the Bank System. This enhanced discretion is to be used on a case-by-case basis.

FIRREA's legislative history provides little guidance on the congressional intent behind the amendment to section 6(e). However, there is evidence that the amendment to section 6(e) arose from and codified a legal opinion written on December 11, 1981 by Jerome Plapinger ("Plapinger opinion"), Special Counsel to the former Federal Home Loan Bank Board ("Bank Board"). The Plapinger opinion dealt with the merger of two Bank members in different districts, i.e. an inter-district merger. Plapinger took the following position:

Orderly liquidation of outstanding advances with

1. Pub. L. 101-73, Title VII, § 706(2), August, 9, 1989.
2. 12 U.S.C.A. § 1426(e) (West Supp. 1990) (Emphasis Added).

Pro rata cancellation of the stock of the disappearing association would be a reasonable and sensible solution to giving the surviving association opportunity to liquidate the obligations of the disappearing association over a reasonable period.. ..

The Plapinger opinion has been relied upon by the Banks as authority to continue to hold the outstanding advances of a former member, and authority to work out the orderly liquidation of such advances. Congress was cognizant of this industry practice, and by amending section 6(e) statutorily authorized it.

Further support may be found in section 932.6 of the Finance Board's regulations. Section 932.6 provides in pertinent part:

If a member institution reorganizes by transferring all or part of its assets to another institution, the Bank shall, subject to (Finance] Board approval, and unless the member's stock is held to secure advances, refund to the member, or at its discretion to the institution acquiring the assets, the value thereof ... or if the institution acquiring the assets has been approved for membership, the Bank may apply such value to the new member's stock subscription.'

Section 932.6 recognizes the Banks' authority to continue to hold outstanding advances of former members, who were acquired by a nonmember institution, and use the capital stock as collateral. Section 6(e) of the Bank Act, the Plapinger opinion and section 932.6 of the Finance Board's regulations leave no doubt that the Banks have the authority to allow former members or their successors to continue to maintain outstanding advances with the Banks.

An individual Bank's method of orderly liquidating the advances of former members is done on a case-by-case basis. Of course, some advances justifiably should be liquidated more slowly than others. The Banks, subject to Finance Board approval, may use considerable leeway when liquidating AHP advances of former members. An important role of the Banks under the Bank Act is to promote and provide for affordable housing for low-to-moderate income families. Thus, a Bank, when orderly liquidating AHP advances maintained by a former member or its successor, has considerable flexibility to do what is necessary (subject to Finance Board approval and as long as it does not jeopardize the safe and sound operation of the Bank) to ensure the continued financing and Successful completion of the AHP project financed by such

3. 12 C.F.R. § 932.6 (1990).

4. 12 U.S.C.A. § 1430(j) (West Supp. 1990).

advances. This includes allowing the AHP advance to remain - Outstanding until maturity if necessary to ensure the AHP project's successful completion.

Another practical alternative is to transfer AHP advances to another member institution, once a borrowing member's membership is terminated. For example, the underlying loan made to the Housing Authority project and the AHP advance used to finance the underlying loan could be transferred to another member institution at the direction of the Bank. This would ensure the continued financing of the AHP project and fulfill the purpose of the AHP. Until a suitable member is found to assume the AHP advance and purchase the underlying loan, the Bank could keep the advance outstanding.

III. CONCLUSION.

The Banks are not required by law to immediately liquidate outstanding advances of former members. The Banks have the authority to determine on a case-by-case basis the best means of orderly liquidating outstanding indebtednesses maintained by former members or their successors with a pro rata redemption of the stock held as collateral. An important role for the Banks under the Bank Act is to promote and provide for affordable housing for low-to-moderate income families. Thus, a Bank, when orderly liquidating AHP advances maintained by a former member or its successors, has the flexibility to do what is necessary (as long as it does not jeopardize the safe and sound operation of the Bank) to ensure the successful completion of the AHP project financed by advances. This includes allowing the AHP advance remain outstanding until maturity if necessary to ensure the AHP project's successful completion.

I concur:



Arnold Intrater
General Counsel

2-11-71
date